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HOUSE BILL 3148 By
McCord

SENATE BILL 3076
By Ramsey

AN ACT to protect water resources and to amend
Chapters 8 and 11 of Title 69 and Section 66-11-210 of
the Tennessee Code Annotated.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Title 69, Chapter 8, Part 1 is amended by deleting the existing Part 1 in its entirety and substituting instead sections 2 through 11 of this Act.

SECTION 2. This part shall be known and may be cited as the “Tennessee Water Resources Information Act.”

SECTION 3. The General Assembly recognizes that in other states the withdrawal of ground water has caused the lowering of the ground water table and that there is potential for surface water withdrawals to impact downstream water uses. Therefore it is necessary and prudent to institute a system of registration so that adequate information is obtained to help water providers and water users understand the demand for water and to project growth in that demand.

SECTION 4. As used in this chapter, unless the context otherwise requires, these terms shall have the following meanings.

(a) “Board” means the water quality control board established pursuant to T.C. A. § 69-3-104.

(b) “Commissioner” means the commissioner of the department of environment and conservation, the commissioner's duly authorized representative and, in the event of the commissioner's absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation.

(c) “Person” means any individual, corporation, company, partnership, association, group, state, municipality, utility district, federal agency, or any combination of them.

(d) “Source” means a location where surface or ground water is available, including but not limited to a water well, cave, spring, stream, river, pond, lake, or impoundment.

(e) “Withdraw” means to take water from any source on a regular or recurring basis by means of an intake structure, pipe and pump that diverts water away from a source, or by any other conveyance with or without the use of suction.

SECTION 5. (a) Except as provided in subsection (a)(2) of this section, it is unlawful for any person to withdraw ten (10,000) thousand or more gallons of water per day from a surface water or a groundwater source unless the withdrawal is currently registered with the commissioner. The commissioner shall accept a recognized method of measuring the quantities of water withdrawn.

(1) Any person who causes such a withdrawal, or proposes such a withdrawal shall annually register such water withdrawal with the commissioner on forms provided for the purpose.

(2) A person may withdraw water for emergencies involving human health and safety without having first registered the withdrawal, provided the commissioner is notified within 48 hours of the commencement of the withdrawal.

(b) Each person upon filing the initial, or annual renewal, registration, shall pay the required fee to the commissioner.

SECTION 6. The commissioner has the power to:

- (a) Identify, locate and quantify all existing surface water withdrawals;
- (b) Identify, locate and quantify all existing ground water withdrawals;
- (c) Establish a monitoring system to determine the status of the state's water resource's including gauging stream flow and groundwater levels;
- (d) Establish and assess fees charged for all water withdrawals covered by this part. If requested, the Commissioner has the discretion to accept services rendered by the registrant in lieu of the registration fee. The value of the services rendered shall be equal to the registration fee, or portion thereof, charged.
- (e) Develop a program of water conservation strategies, including education, for all types of water users;
- (f) Collect water data and other information, including well data and information on uses of water, and to develop registration and other forms for these purposes and, if requested and deemed necessary by the commissioner, keep such data and information confidential;
- (g) Make inspections and investigations, collect samples, carry on research, or take such other action as may be necessary to carry out the provisions of this chapter, rules and regulations issued pursuant thereto, and any orders which the commissioner may issue;

- (h) Enter or authorize the commissioner's agents to enter at all reasonable times upon any property other than dwelling places for the purpose of conducting investigations or studies or enforcing any of the provisions of this chapter;
- (i) Bring suit in the name of the department for any violation of the provisions of this chapter, rules and regulations, and orders of the commissioner seeking any remedy therein provided and any other statutory or common law remedy therein provided;
- (j) Assess civil penalties for violation of any provision of this chapter or any rule, regulation, standard adopted or order issued by the commissioner pursuant to this chapter and late payment penalties for fees not paid timely;
- (k) Issue orders as may be necessary to secure compliance with the provisions of this chapter, as well as the rules and regulations adopted pursuant to this chapter;
- (l) Exercise general supervision over the administration and enforcement of this chapter and all rules and regulations promulgated thereunder; and
- (m) Promulgate the rules that the commissioner deems reasonable and necessary to effectuate the purposes of this chapter, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Such rules and regulations shall be presented to the commissioner for adoption by January 1, 2003.

SECTION 7. (a)(1) Whenever the commissioner has reason to believe that a person is withdrawing water without having a valid registration, or has supplied false or materially misleading information to the Department or has violated any order or rule promulgated pursuant to this part, the commissioner may cause a written administrative order to be delivered to the alleged violator. The order shall specify the provision of this part or rule or order alleged to be

violated, the facts alleged to constitute a violation thereof, and may order that corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing.

(2) Any such order shall become final and not subject to review unless the person or persons named therein request by written petition a hearing no later than thirty (30) days after the date such order is delivered; provided, that the commissioner may review such final order on the same grounds upon which a court of the state may review default judgments.

(b) Except as otherwise expressly provided, any order issued by or under authority of this part may be served on any person by the commissioner or any person designated by the commissioner, by certified mail, or in accordance with Tennessee statutes authorizing service of process in civil actions.

(c) Any person who violates or fails to comply with any provision of this chapter, any order of the commissioner issued pursuant to this chapter or any rule, regulation, or standard adopted pursuant to this chapter shall be subject to a civil penalty of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000) per day for each day of violation. Each day such violation continues is a separate violation.

(d) In addition to the commissioner bringing an action in any court of competent jurisdiction, a civil penalty may be assessed in the following manner:

(1) The commissioner may issue an assessment against any person responsible for the violation;

(2) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections and asking for a hearing in the matter involved. If a

petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator shall be deemed to have consented to the assessment and it shall become final; and

(3) Whenever any assessment has become final because of a person's failure to appeal the commissioner's assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

(4) In assessing a civil penalty, the following factors may be considered:

(A) The harm done or potential for harm to the public health or the environment;

(B) The harm done or potential for harm to the regulatory program by the violation;

(C) The economic benefit gained by the violator;

(D) The amount of effort put forth by the violator to remedy this violation; and

(E) Any unusual or extraordinary enforcement costs incurred by the commissioner.

(e) Any hearing or rehearing brought before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(f) The commissioner may also initiate an action in any court of competent jurisdiction seeking a judgment for any unpaid fees and penalties.

(g) When there is reason to believe that a person has violated, or is about to violate, any of the provisions of this chapter or any license or orders issued thereunder, the commissioner may institute proceedings in the appropriate court for injunctive relief.

(h) Any person intentionally violating, or failing, neglecting, or refusing to comply with, any of the provisions of this chapter or rules or regulations commits a Class C misdemeanor. Each day upon which such violation occurs is a separate offense.

SECTION 8. (a) The commissioner shall document and report to the legislature the status of the state's water resources every five (5) years. The report shall be by region and shall specifically address the balance between water supply and water demand. Where available, the commissioner may use existing reporting processes.

(b) The commissioner shall develop and report annually a summary of key water indicators including but not limited to stream flows, groundwater levels and water usage. The report shall be by region and, where available, the commissioner may use existing reporting processes.

SECTION 9. (a) The commissioner shall encourage and support regional water planning whenever possible. In the future, if there is a specific appropriation of state or federal funds for regional planning, the commissioner may require regional water planning and may provide incentives to encourage such regional planning, using the rulemaking authority under this part. Among other criteria, state agencies are authorized to consider regional planning and regionalization efforts when awarding grants, making loans or funding projects.

(b) The General Assembly recognizes that the Duck River Development Authority and the Mississippi, Arkansas, Tennessee Regional Aquifer Study are potential models for regional planning and modeling efforts. By January 1, 2003, the Duck River Development Authority and the Mississippi, Arkansas, Tennessee Regional Aquifer Study shall report to the General

Assembly their findings and lessons learned. All state agencies are encouraged to cooperate with these agencies.

SECTION 10. The commissioner may appoint a technical advisory committee, the number of members to be determined by the commissioner, that shall advise the commissioner on the status of the state's water resources and future planning efforts. The technical advisory committee shall be composed of representatives of federal, state, and local agencies and of appropriate private organizations, including not for profit organizations. No member of this committee is entitled to a salary for duties performed as a member of the committee. No member is entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

SECTION 11. The fees, and penalties received pursuant to this chapter shall be used exclusively for the purpose of funding the operation, management, and enforcement of the programs under this part including the registration program and the monitoring and reporting program.

SECTION 12. Tennessee Code Annotated Title 69, Chapter 11, is amended by adding the following new section at the beginning of part 1, and redesignating existing sections as necessary:

() This part may be known and cited as the Comprehensive Well Driller Licensing Act of 2002.

SECTION 13. Tennessee Code Annotated Title 69, Chapter 11, is amended by deleting the phrase “water well” wherever found and inserting in lieu thereof the word “well.”

SECTION 14. Tennessee Code Annotated Subsection 69-11-101 is amended by deleting it and substituting instead the following:

- (1) “Board” means the board of ground water management.
- (2) “Commissioner” means the commissioner of environment and conservation, the commissioner’s duly authorized representative and, in the event of the commissioner’s absence or a vacancy in the office of commissioner, the deputy commissioner of environment and conservation, and the senior administrative official of a local program authorized to administer a program under section 12 of this act;
- (3) “Department” means the department of environment and conservation.
- (4) “Drill” means to dig, drill, re-drill, construct, or alter a well;
- (5) “Geothermal well” means a hole drilled, re-drilled or dug into the earth greater than twenty feet in depth constructed for the primary purpose of adding or removing British Thermal Units (BTU) from the earth for heating or cooling.
- (6) “Inactive Well” means any well not in use and does not have functioning equipment, including bailers, associated either in or attached to the well.
- (7) “Installer” means any person who installs or repairs well pumps or who installs filters and water treatment devices;
- (8) “Log” means a record of the consolidated or unconsolidated formation penetrated in the drilling of a well, and includes general information concerning construction of a well.

(9) "Monitoring well" means a hole drilled, re-drilled or dug into the earth constructed for the primary purpose of obtaining information on the elevation or physical, chemical, radiological or biological characteristics of the ground water.

(10) "Person" means any individual, organization, group, association, partnership, corporation, limited liability company, state or local government agency or any combination of them;

(11) "Water well" means a hole drilled, re-drilled or dug into the earth, by boring or otherwise, for the production of water.

(12) "Well" means one of these three types of holes in the earth: a geothermal well, a monitoring well, or a water well.

(13) "Well owner" means the person who owns the real property on which a well exists or is to be drilled or dug.

SECTION 15. Tennessee Code Annotated 69-11-102 is amended by deleting it and substituting instead the following:

(a) It is unlawful for any well to be drilled, dug, constructed or reworked, deepened or abandoned except by licensed individuals. In order to obtain a water well, a monitoring well or a geothermal well driller license, an individual shall file with the commissioner, on or before July 31 of each year, an application form to be made available by the commissioner, with the following information:

- (1) The name under which the individual is doing business in this state;
- (2) The office address or principal place of business of the individual; and

- (3) Such other information as the commissioner may deem reasonable and necessary;

provided that those persons who have engaged in the business of drilling geothermal or monitoring wells prior to January 1, 2002 may be issued a license by the commissioner if:

- (4) they submit an application for license within six months of the effective date of this Act; and
- (5) they provide acceptable documentation to the commissioner concerning construction experience for the type license being applied for.

(b) Each applicant for one of the three types of driller's licenses shall submit the required fee to the commissioner with the application. The payment of the fee shall be in lieu of any additional state or county privilege tax, except as provided in section 27. Upon finding that the applicant meets all requirements for the license, the commissioner shall issue the license for a period not to exceed one year.

(c) An individual may apply for more than one of the three types of driller licenses and may apply for a pump installer and/or water treatment installer license by applying for each license desired and paying the required fee.

(d) It is unlawful:

- (1) to engage in the business of installing, removing or repairing well pumps or drop lines in wells; or
- (2) to engage in the business of repairing, servicing or installing filters and water treatment devices on wells;

except if it is done by a licensed individual.

(e) In order to obtain a license to install pumps or to install filters and treatment devices, an individual shall annually file with the commissioner, on or before July 31 of each year, an application form made available by the commissioner, with the following information:

- (1) The name under which the individual is doing business in this state;
- (2) The office address or principal place of business of the individual; and
- (3) Such other information as the commissioner may deem reasonable and necessary.

(f) Each applicant for a pump installer and/or a water treatment installer license, shall submit the required annual fee to the commissioner with the application.

Upon finding that the applicant meets all requirements for the license, the commissioner shall issue the license for a period not to exceed one year.

(g) Each licensee individually shall obtain continuing education credits, as determined by the commissioner and established by rules promulgated under this part, during each twelve-month period beginning on August 1, 2003.

SECTION 16. Tennessee Code Annotated Section 69-11-103 is amended by deleting it and substituting instead the following:

(a) It is unlawful, and a violation of this chapter, for any person to drill a water well within the state of Tennessee, unless the following provisions are complied with:

- (1) The driller of the water well shall be licensed as provided in § 69-11-102;
- (2) The driller shall, at all times during the drilling of a water well, keep posted in a conspicuous location, at or near the well being drilled, the appropriate certificate

as furnished by the commissioner and the Notice of Intent for the property being drilled; and

(3) The driller of the well after the completion of the drilling of each well, shall deliver to the commissioner upon forms to be supplied by the commissioner, a “report of well driller” by a date determined by the commissioner to contain at least the following information:

- (A) The name and address of the well owner;
- (B) The location of the well;
- (C) The date upon which the well was completed; and
- (D) The “log” of the well.

(b) The commissioner shall have the authority to inspect, and approve or disapprove, the drilling of any well, the installation and repair of well pumps or water treatment devices, the installation and repair of all conduits, valves, or other appurtenances which convey water between the well and any building, structure or any water discharge point.

(c) All wells shall be drilled, dug, constructed, altered, maintained, and abandoned in accordance with all standards and requirements established by rules promulgated under this part.

SECTION 17. Tennessee Code Annotated Section 69-11-104 is amended by deleting the section and substituting instead the following new section:

It shall be unlawful to operate or install any equipment in the drilling of water, geothermal, or monitoring wells, or in the installation of any pumps or water treatment devices unless a licensed individual, or an operator designated by the licensee, supervises the activity.

SECTION 18. Tennessee Code Annotated Section 69-11-105(a) is amended by deleting the language before the colon and substituting instead the following:

(a) A license or operator card shall be refused, or a license or operator card duly issued shall be suspended or revoked, or the renewal thereof refused by the commissioner, upon a finding that the applicant or holder:

SECTION 19. Tennessee Code Annotated Section 69-11-105(a) is further amended by adding the following new, appropriately designated subsections:

- () Has failed to comply with an order or assessment issued by the commissioner;
- () Has been convicted of a felony;

SECTION 20. Tennessee Code Annotated Section 69-11-106 is amended by adding the following new, appropriately designated subsections:

- () Establish standards for installation of pumps and treatment devices, for the proper drilling, construction, maintenance, and abandonment of all types of wells by well drillers including but not limited to the casing, perforating, plugging, cementing, and capping of wells and for maintenance of wells by well owners;
- and

SECTION 21. Tennessee Code Annotated Title 69, Chapter 11, Part 1 is amended by adding a new, appropriately designated section as follows, redesignating existing sections as necessary:

- () Notice of Intent to Drill.

It is unlawful for any well to be drilled unless the well owner has previously filed a notice of intent to drill a well, together with the required fee, with the commissioner, in the manner prescribed by the commissioner. The notice of intent to drill shall include, at a minimum, the name and address of the owner, the location of the well, type of well and intended use.

SECTION 22. Tennessee Code Annotated, Section 69-11-107(a)(1) is amended by deleting the phrase “including the commissioner of environment and conservation and the director of water management” and inserting in lieu thereof the phrase “including the commissioner and the director of water supply or their designees.”

SECTION 23. Tennessee Code Annotated, Section 69-11-108 is amended by deleting it in its entirety.

SECTION 24. Tennessee Code Annotated Title 69, Chapter 11 is amended by deleting section 69-11-109 and substituting instead the following:

All funds received by the commissioner under this part shall be used exclusively for the purpose of funding the operation, management and enforcement of the programs under this part.

SECTION 25. Tennessee Code Annotated Section 69-11-110 is amended by adding the following as a new appropriately designated subsection:

() Any person who: (1) causes any substance to enter a well with the intent to cause harm, or (2) intentionally assaults, injures or harms a state employee performing duties authorized by this part, commits a Class E felony. Each day such violation occurs constitutes a separate punishable offense.

SECTION 26. Tennessee Code Annotated Title 69, Chapter 11, Part 1 is amended by adding a new, appropriately designated section as follows:

- (a) Any municipality or county in this state may enact, by ordinance or resolution respectively, enforceable requirements not less stringent than the standards adopted by the state pursuant to this part.
- (b) Any political subdivision desiring to be exempted from the provisions of this part may file a petition for certificate of exemption with the commissioner. The commissioner shall grant or deny the petition.
- (c) The certificate of exemption shall be granted if the commissioner determines that the municipality or county has enacted provisions not less stringent than the provisions of this part and that such enactments are being, or will be, adequately enforced.
- (d) The commissioner may grant a certificate of exemption in whole or in part, may prescribe a time schedule for various parts of an exemption to become effective, and may make a certificate of exemption conditional or provisional as is deemed appropriate.
- (e) In granting any certificate of exemption, there is reserved to the state the right to initiate proceedings to enforce any applicable resolution, ordinance or

regulation of the municipality or county should it fail to obtain compliance therewith. Such proceedings shall be the same as for enforcement of any duly promulgated rule or regulation.

(f) In granting any certificate of exemption, the exemption is to be strictly construed as limited to the language of the exemption. No power or authority which is not expressly stated in the certificate of exemption may be implied. The municipality or county may further petition the board for such power or authority.

(g) The department shall frequently determine whether or not any exempted municipality or county meets the terms of the exemption granted and continues to comply with the provisions of this section. If a determination is made that the municipality or county does not meet the terms of the exemption granted or does not comply with the provisions of this section, the commissioner, upon reasonable notice to the municipality or county, may suspend the exemption in whole or in part until such time as the municipality or county complies with the state standards.

(h) All certificates of exemption, including those expiring on the above date, shall be for a fixed term not to exceed five (5) years.

(i) Fees collected by any exempted municipality or county shall be distributed to ensure that all state, county and/or municipal programs under this part are equitably funded as determined by the commissioner.

SECTION 27. Tennessee Code Annotated, Section 66-5-210 is amended by adding the following as a new, appropriately designated item to subsection 66-5-210(C) and renumbering as necessary:

Any inactive wells and/or improperly constructed wells located any where on the property?

YES NO UNKNOWN

SECTION 28. This Act shall take effect upon becoming a law, the public welfare requiring it.